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State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Oil, Gas & Mining

MICHAEL R. STYLER
Executive Director

JOHN R. BAZA
Division Director

Outgoing
C0150025
#3619
K

October 11, 2010

CERTIFIED RETURN RECEIPT
7005 0390 0000 7507 4795

Kenneth Rushton, Trustee
99 West Main Street, #202
Lehi, Utah 84043

Subject: Proposed Assessment for State Violation No. N 10068, Bear Canyon Mine,
C/015/0025, Task ID #3619 Outgoing File

Dear Mr. Rushton:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the Assessment Officer for assessing penalties under R645-401.

Enclosed is the proposed civil penalty assessment for the above referenced violation. The violation was issued by Division Inspector, Karl Housekeeper, on September 22, 2010. Rule R645-401-600 et. seq. has been utilized to formulate the proposed penalty. By these rules, any written information which was submitted by you or your agent within fifteen (15) days of receipt of this Notice of Violation has been considered in determining the facts surrounding the violation and the amount of penalty.

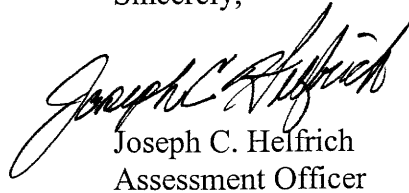
Under R645-401-700, there are two informal appeal options available to you:

1. If you wish to informally appeal the fact of this violation, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.

2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph 1, the Assessment Conference will be scheduled immediately following that review.

If a timely request for review is not made, the fact of violation will stand, the proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the proposed assessment. Please remit payment to the Division, mail c/o Suzanne Steab.

Sincerely,



Joseph C. Helfrich
Assessment Officer

Enclosure

cc: OSM Compliance Report
Suzanne Steab, DOGM
Vicki Bailey, DOGM
Price Field Office
O:\015025.BCN\WG3619\JCHWG3619.DOC

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City, State, ZIP+4	Lehi UT 84043

PS Form 3800, June 2002 See Reverse for Instructions

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS:

**** The information in the inspector's statement indicates that " Construction activities had taken place on diversion D-8D. A concrete apron was poured. Construction activities were taking place on the shop pad. A concrete valve box was in the process of being constructed. No plans were submitted to the Division. No approvals from the Division were issued".*

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 0

PROVIDE AN EXPLANATION OF POINTS:

**** The information in the inspector's statement indicates that no damage occurred as a result of the violation.*

B. HINDRANCE VIOLATION (Max 25 pts.)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? Actual
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS 0

PROVIDE AN EXPLANATION OF POINTS:

TOTAL SERIOUSNESS POINTS (A or B) 20

III. NEGLIGENCE (Max 30 pts.)

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, or the failure to abate any violation due to the same? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Greater Degree of Fault

ASSIGN NEGLIGENCE POINTS 8

PROVIDE AN EXPLANATION OF POINTS:

**** According to the information in the inspector statement the violation resulted from the lack of reasonable care.*

IV. GOOD FAITH (Max 20 pts.)

(Either A or B)

(Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?
IF SO--EASY ABATEMENT

Easy Abatement Situation

X	Immediate Compliance	-11 to -20*
	(Immediately following the issuance of the NOV)	
X	Rapid Compliance	-1 to -10
	(Permittee used diligence to abate the violation)	
X	Normal Compliance	0
	(Operator complied within the abatement period required)	
	(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)	

*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?
IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- | | | |
|---|---|-------------|
| X | Rapid Compliance
(Permittee used diligence to abate the violation) | -11 to -20* |
| X | Normal Compliance
(Operator complied within the abatement period required) | -1 to -10* |
| X | Extended Compliance
(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)
(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan) | 0 |

EASY OR DIFFICULT ABATEMENT? Difficult, plans were required

ASSIGN GOOD FAITH POINTS 0

PROVIDE AN EXPLANATION OF POINTS:

****Good faith points may be awarded upon termination of the violation; the scheduled date for abatement is October 25, 2010.*

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION # N 10068

I.	TOTAL HISTORY POINTS	<u>1</u>
II.	TOTAL SERIOUSNESS POINTS	<u>20</u>
III.	TOTAL NEGLIGENCE POINTS	<u>8</u>
IV.	TOTAL GOOD FAITH POINTS	<u>0</u>
	TOTAL ASSESSED POINTS	<u>29</u>

TOTAL ASSESSED FINE	<u>\$ 990</u>
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